

REMARKS

This paper is in response to the Office Action dated December 12, 2008. Claims 1 - 14 are pending in the application.

Applicant respectfully traverses the rejection of claims 1 – 4 and 13 under § 103 as being unpatentable over US 5,229,122 to Chadwick et al. (Chadwick) in view of US 4,517,201 to Kerry et al. (Kerry). Applicants respectfully traverse.

By way of summary, the presently claimed invention relates to a continuous phase which contains a non-encapsulated pesticide plus encapsulated adjuvant. As specified in claim 1, an aqueous continuous phase in which an agrochemical is either dissolved or dispersed. In addition, microcapsules are suspended in the aqueous continuous phase and these microcapsules contain within them a bioperformance-enhancing adjuvant.

The Examiner has cited Chadwick which relates to a continuous phase that contains a non-encapsulated pesticide as well as encapsulated pesticide in combination with Kerry that relates to synergistic mixtures of pesticides.

In making the rejection, the Examiner considers that the synergistic mixture of Kerry suggests adjuvant behavior and has then simply combined Chadwick and Kerry to arrive at the present invention. Applicant submits that this is an analysis improperly founded on a hindsight reconstruction of the present invention

More specifically, the Examiner has incorrectly equated synergy between pesticides as provided by Kerry as suggesting adjuvancy. However, one of ordinary skill would be aware of the following: adjuvants themselves are not pesticides. For instance, adjuvants do not require the same regulatory requirements as pesticides. An adjuvant is a substance, other than water, which does not itself have pesticidal properties but which enhances the effectiveness of a pesticide with which it is mixed. Moreover, adjuvants tend to be considerably cheaper than pesticides.

Therefore, in the context of the present invention, the teaching of Kerry is irrelevant. The modification of Chadwick as suggested by the Examiner simply would not result in the presently claimed invention.

As explained, for example, on the first two and a half pages of the specification, the present invention is concerned with overcoming a problem of formulation incompatibility between adjuvants and pesticides [agrochemicals], particularly when either component is present in a high concentration. There is nothing in Chadwick that would suggest to one of ordinary skill to solve this problem by encapsulating adjuvants as provided by the present invention.

In addition, as Kerry is neither concerned with adjuvancy nor is the document related to issues of formulation compatibility. Therefore one skilled in the art would have no reasonable expectation that the combination of Chadwick and Kerry would lead to the result suggested by the Examiner.

Likewise, claims 5 – 13 and 14 are rejected under § 103 as being unpatentable over Chadwick in view of Kerry as noted above, and further in view of US 4,808,408 (Baker) (claims 5 – 13) or in view of Baker and US 5,393,791 (Roberts) (claim 14). Applicants respectfully traverse these rejections.

More particularly, the secondary rejections merely build on the Examiner's rejection of claims 1 - 4. As noted above, the obvious analysis based on the combination of Chadwick and Kerry is founded upon an erroneous starting point; the deficiencies of such analysis are not remedied by either of Baker and/or Roberts. Accordingly, a modification of the combined teachings of Chadwick and Kerry in view of either Baker or Roberts would not result in the presently claimed invention.

Reconsideration and withdrawal of all the § 103 rejections are respectfully requested.

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In view of the foregoing remarks, Applicant submits that the subject matter of the claims 1 – 14 is patentable and that such claims are in condition for allowance. Reconsideration and withdrawal of all rejections are respectfully requested, along with the issuance of a Notice of Allowance.

Respectfully submitted,

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